

# EXHIBIT 17

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April 23, 2007

Robert L. Maier  
212.408.2538  
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robert.maier@bakerbotts.com

**VIA E-MAIL**

Peter N. Surdo, Esq.  
Robins, Kaplan, Miller & Ciresi LLP  
2800 LaSalle Plaza  
800 LaSalle Avenue  
Minneapolis, MN 55402-2015

Re: *Honeywell Int'l, Inc. et al. v. Apple Computer, Inc. et al.*  
Civil Action No. 04-1338

Dear Pete:

This is in response to your April 17, 2007 letter to Neil Sirota and further to our meet and confer regarding deposition scheduling and the correlation of documents to modules in Hitachi's document production.

Hitachi will agree to your proposed compromise that Hitachi produce the correlation documents (*i.e.*, documents similar to the type produced the morning of Tsukizaki-san's deposition in Osaka) for only those modules sold directly in the United States.

Additionally, Hitachi can agree to go forward with the laches deposition during the week of July 2.

Very truly yours,



Robert L. Maier

# EXHIBIT 18

**Gustafson, Stacy D.**

---

**From:** Neil.Sirota@bakerbotts.com  
**Sent:** Wednesday, November 22, 2006 4:07 PM  
**To:** McDiarmid, Jeremy C.  
**Cc:** McKenna, Alan E.; Woods, Matthew L.; TGrimm@MNAT.com; Robert.Scheinfeld@bakerbotts.com; Robert.Maier@bakerbotts.com  
**Subject:** RE: Honeywell v. Hitachi, et. al.

Dear Jeremy,

Thank you for your letter of November 13, 2006. As we discussed last week, Hitachi does not believe that it is subject to an obligation to identify "generational" modules because Hitachi has produced documents for all potentially relevant modules so that Honeywell can identify for Hitachi all "accused modules." Please advise when Honeywell will be supplementing its response to Hitachi's Interrogatory Nos. 1-3.

Regards.

Neil

Neil P. Sirota  
Baker Botts L.L.P. ■  
30 Rockefeller Plaza  
New York, New York 10112  
tel.: 212.408.2548  
personal fax: 212.259.2548  
main fax: 212.408.2501

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-----Original Message-----

**From:** McDiarmid, Jeremy C. [mailto:JCMcDiarmid@rkmc.com]  
**Sent:** Monday, November 13, 2006 5:36 PM  
**To:** Sirota, Neil P.  
**Cc:** McKenna, Alan E.; Woods, Matthew L.; Thomas C. Grimm  
**Subject:** Honeywell v. Hitachi, et. al.

>>>> Please read the confidentiality statement below <<<<

Hi Neil,

Sorry I missed your call today.

Attached please find a letter concerning Hitachi's generational modules.

Best regards,

Jeremy

Jeremy C. McDiarmid

12/12/2006

Robins, Kaplan, Miller & Ciresi L.L.P.  
800 Boylston Street, 25th Floor  
Boston, MA 02199  
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Thank you in advance for your cooperation.

Robins, Kaplan, Miller & Ciresi L.L.P.  
<http://www.rkmc.com>

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# EXHIBIT 19

**Surdo, Peter N.**

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**From:** Surdo, Peter N.  
**Sent:** Monday, April 23, 2007 5:20 PM  
**To:** 'Robert.Maier@bakerbotts.com'  
**Cc:** Neil.Sirota@bakerbotts.com; Woods, Matthew L.; McKenna, Alan E.; 'Polizoti, Leslie'  
**Subject:** RE: Honeywell International Inc., et al. v. Apple Computer, Inc., et al. (C.A. No. 04-1338-\*\*\*)

Dear Rob,

Thanks for your letter. We will begin processing the necessary paperwork to conduct depositions the week of July 2. We anticipate conducting the deposition of Hitachi's designated witness for the recently-noticed laches topics, and continuing the depositions of those witnesses for which we requested follow-up deposition time (pending the outcome of a hearing on the issue).

We do appreciate your agreement to provide technical documents for modules sold directly into the United States. Given the short timeframe, we request you provide such documentation by May 4. For modules sold worldwide but not directly into the United States, we maintain our position that Hitachi should either: (1) agree that res judicata does not apply, or (2) produce the same information as it has agreed to provide for those modules sold directly into the United States.

We have scheduled a hearing for May 2 at 2pm EST. From my understanding, the Judge would like to address these issues in conjunction with other pending discovery matters.

Have a safe trip to Minnesota.

Regards,

Pete

Peter N. Surdo  
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**From:** Robert.Maier@bakerbotts.com [mailto:Robert.Maier@bakerbotts.com]  
**Sent:** Monday, April 23, 2007 1:46 PM  
**To:** Surdo, Peter N.  
**Cc:** Neil.Sirota@bakerbotts.com  
**Subject:** Honeywell International Inc., et al. v. Apple Computer, Inc., et al. (C.A. No. 04-1338-\*\*\*)

Dear Pete:

Please see attached.  
<<NYC\_ECOPY.pdf>>  
Thanks and best,  
Robert L. Maier  
BAKER BOTTS LLP ■  
30 Rockefeller Plaza

4/24/2007

New York, New York 10112-4498  
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# EXHIBIT 20

Friday, July 21, 2006

SHEET 1

1

1 THE UNITED STATES DISTRICT COURT  
 2 IN AND FOR THE DISTRICT OF DELAWARE

3 - - -  
 4 HONEYWELL INTERNATIONAL, INC. : CIVIL ACTIONS  
 5 et al. :  
 6 Plaintiffs, :  
 7 v. :  
 8 AUDIOVOX COMMUNICATIONS CORP., :  
 9 et al. :  
 10 Defendants. : NO. 04-1337 (KAJ)

11 -----  
 12 HONEYWELL INTERNATIONAL, INC. :  
 13 et al. :  
 14 Plaintiffs, :  
 15 v. :  
 16 APPLE COMPUTER, INC., et al., :  
 17 Defendants. : NO. 04-1338 (KAJ)

18 -----  
 19 OPTREX AMERICA, INC., :  
 20 Plaintiff, :  
 21 v. :  
 22 HONEYWELL INTERNATIONAL, INC. :  
 23 et al. :  
 24 Defendants. : NO. 04-1536 (KAJ)

25 - - -  
 26 Wilmington, Delaware  
 27 Friday, July 21, 2006 at 11:03 a.m.  
 28 TELEPHONE CONFERENCE

29 - - -  
 30 BEFORE: HONORABLE KENT A. JORDAN, U.S.D.C.J.  
 31 - - -

Friday, July 21, 2006

SHEET 2

2

## 1 APPEARANCES:

2 ASHBY & GEDDES  
3 BY: STEVEN J. BALICK, ESQ.

4 and

5 MORRIS NICHOLS ARSHT & TUNNELL  
6 BY: JULIA HEANEY, ESQ.,

7 and

8 ROBINS KAPLAN MILLER & CIRESI, L.L.P.  
9 BY: MARTIN R. LUECK, ESQ.,  
10 MATTHEW L. WOODS, ESQ., and  
11 STACIE E. OBERTS, ESQ.  
(Minneapolis, Minnesota)

12 Counsel on behalf of Honeywell  
13 International, Inc., and Honeywell  
14 Intellectual Properties, Inc.

15 YOUNG CONAWAY STARGATT & TAYLOR  
16 BY: KAREN L. PASCALE, ESQ.

17 and

18 OBLON SPIVAK McCLELLAND MAIER & NEUSTADT, P.C.  
19 BY: ALEXANDER E. GASSER, ESQ., and  
20 JOHN F. PRESPER, ESQ.  
(Alexandria, Virginia)

21 Counsel for Optrex America, Inc.

22 BOUCHARD MARGULES & FRIEDLANDER  
23 BY: JAMES GORDON McMILLAN, III, ESQ.

24 Counsel for Citizen Watch Co., Ltd.;  
25 Citizen Displays Co., Ltd.

FISH & RICHARDSON, P.C.  
BY: WILLIAM J. MARSDEN, ESQ.

Counsel for ID Tech; International  
Display Technology USA Inc.

3

## 1 APPEARANCES: (Continued)

2 YOUNG CONAWAY STARGATT & TAYLOR  
3 BY: MONTE' TERRELL SQUIRE, ESQ.

4 and

5 PAUL HASTINGS JANOWSKY & WALKER, LLP  
6 BY: PETER J. WIED, ESQ., and  
7 HUA CHEN, ESQ.  
(Los Angeles, California)

8 Counsel for Quanta Display Inc.

9 SMITH KATZENSTEIN & FURLOW  
10 BY: JOELLE ELLEN POLESKY, ESQ.

11 and

12 HOGAN & HARTSON, LLP  
13 BY: ROBERT J. BENSON, ESQ.  
(Los Angeles, California)

14 Counsel for Seiko Epson Corp.,  
15 Sanyo Epson Imaging Devices Corporation

16 RICHARDS LAYTON & FINGER  
17 BY: WILLIAM J. WADE, ESQ.

18 and

19 TROP PRUNER & HU  
20 BY: DAN C. HU, ESQ.  
(Houston, Texas)

21 Counsel for Arima Display

5

## 1 APPEARANCES: (Continued):

2 YOUNG CONAWAY STARGATT & TAYLOR  
3 BY: JOHN W. SHAW, ESQ.

4 and

5 KENYON & KENYON  
6 BY: ROBERT L. HAILS, ESQ.  
(Washington, District of Columbia)

7 and

8 KENYON & KENYON  
9 BY: JOHN FLOCK, ESQ.  
(New York, New York)

10 Counsel for Sony Corporation, and Sony  
11 Corporation of America

12 POTTER ANDERSON & CORROON, LLP  
13 BY: PHILIP A. ROVNER, ESQ.

14 and

15 STROOCK & STROOCK & LAVAN LLP  
16 BY: LAWRENCE ROSENTHAL, ESQ.,  
17 MATTHEW W. SIEGAL, ESQ., and  
18 KEVIN ECKER, ESQ.  
(New York, New York)

19 Counsel for Fuji Photo Film Co., Ltd.  
20 and Fuji Photo Film U.S.A. Inc.

21 FISH & RICHARDSON, P.C.  
22 BY: THOMAS L. HALKOWSKI, ESQ.

23 and

24 FISH & RICHARDSON, P.C.  
25 BY: JOHN T. JOHNSON, ESQ.  
(New York, New York)

Counsel for Casio, Inc., Casio Computer

Friday, July 21, 2006

SHEET 3

6

1 APPEARANCES: (Continued)

2 BAKER BOTTS, L.L.P.  
 3 BY: NEIL P. SIROTA, ESQ., and  
 4 ROBERT MAIER, ESQ.  
 (New York, New York)

5 Counsel for Hitachi, Ltd., Hitachi  
 6 Displays, Ltd., Hitachi Display Devices,  
 7 Ltd., Hitachi Electronic Devices (USA),  
 8 Inc.

9 Brian P. Gaffigan  
 10 Registered Merit Reporter

11 - oOo -

## 12 PROCEEDINGS

13 REPORTER'S NOTE: The following telephone  
 14 conference was held in chambers, beginning at 11:03 a.m.)

15 THE COURT: Hi, this is Judge Jordan. Who do I  
 16 have on the line?

17 MS. HEANEY: Good morning, Your Honor. It's  
 18 Julie Heaney for Honeywell. I'm covering for Tom Grimm  
 19 this morning; and from Robins Kaplan, we have Martin Lueck,  
 20 Matthew Woods and Stacie Oberts.

21 MR. MORRIS: Also, John Day for Honeywell in the  
 22 1337 action, Your Honor.

23 THE COURT: All right.

24 MR. HORWITZ: Good morning, Your Honor. This  
 25

7

1 is Rich Horwitz at Potter Anderson for a number of the  
 2 defendants. With me for Boe-Hydis, Kevin O'Brien; for  
 3 Hitachi, Neil Sirota and Robert Maier; for Phillips, we  
 4 have Nelson Kee; for TPO and Wintek, York Faulkner and  
 5 Elizabeth Niemeyer; and for Samsung, Elizabeth Brann.

6 MR. ROVNER: Your Honor, this is Phil Rovner  
 7 for defendant Fuji Photo. With me on the line is Lawrence  
 8 Rosenthal, Matt Siegal, I believe, and Kevin Ecker.

9 MR. WADE: Good morning, Your Honor. It's Bill  
 10 Wade for Arima Display. With me on the phone is Dan Hu.

11 MR. HALKOWSKI: Good morning, Your Honor. This  
 12 is Tom Halkowski with Fish & Richardson on behalf of the  
 13 Casio defendants. With me on the line are John Johnson from  
 14 our New York office.

15 MR. SQUIRE: Good morning, Your Honor. This is  
 16 Monte' Squire from Young Conaway representing defendant  
 17 Quanta Display. With me on the line are Peter Weid and Hua  
 18 Chen from Paul Hastings in Los Angeles.

19 MS. PASCALE: Your Honor, this is Karen Pascale  
 20 from Young Conaway for Optrex America, the plaintiff in the  
 21 1536 action. And on the line, my co-counsel from Oblon  
 22 Spivak is Alex Gasser and John Presper.

23 MR. MARSDEN: Good morning, Your Honor. William  
 24 Marsden from Fish & Richardson for defendant ID Tech.

25 MR. SHAW: Good morning, Your Honor. John Shaw

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1 for defendant Sony Corporation. With me from Kenyon &  
 2 Kenyon, John Flock and Bob Hails.

3 MS. POLESKY: Good morning, Your Honor. Joelle  
 4 Polesky on behalf of Seiko Epson and Sanyo Epson Imaging  
 5 Devices. On the line is our co-counsel Robert Benson from  
 6 Hogan & Hartson.

7 MR. McMILLAN: Good morning, Your Honor. It's  
 8 Jay McMillan for Citizen Watch Company and Citizen Displays  
 9 Company.

10 THE COURT: Anybody else?

11 Well, we're here to deal with a few issues.

12 And if you've got me on speaker, you may need to pick up  
 13 because, particularly if you are going to be speaking, it  
 14 makes it difficult for me to keep the conference call on  
 15 track if I can't insert myself in the discussion. And if  
 16 you're moving papers around next to your telephone, that  
 17 also can cause some interference or noise that makes it  
 18 hard to hear.

19 Why don't we start with the first sort of  
 20 fundamental problem it looks like we're dealing with here  
 21 which is the assertion on both sides that discovery isn't  
 22 moving forward. I've got of the defendants saying to me,  
 23 Honeywell won't give basic contention discovery with respect  
 24 to its infringement positions, nor will it provide discovery  
 25 without assurances that discovery won't be shared among

9

1 defendants. And I take it that the defendants disagree with  
 2 both those positions that they view Honeywell as having  
 3 taken. And on the other side, I have Honeywell arguing to  
 4 me that the defendants are just failing to provide some  
 5 basic information with respect to the same or similar  
 6 versions of accused devices.

7 So, let me start by asking Honeywell some  
 8 questions here. First, I assume, of course, that you have  
 9 read your opponents' correspondence. Who is going to be  
 10 speaking for Honeywell on this?

11 MR. LEUCK: Your Honor, this is Martin Lueck. I  
 12 had planned to address the issues of Honeywell's discovery  
 13 that we are seeking from the defendants. Mr. Woods has been  
 14 more involved in the Honeywell discovery going in the other  
 15 direction and is prepared to speak to that.

16 THE COURT: Well, Mr. Lueck, I'll give you first  
 17 crack. You've seen the opponents here come forward and say  
 18 you've essentially posed discovery that says tell us  
 19 everything that fits our patent. Even though you haven't  
 20 framed it in that particular language, you've taken the  
 21 elements of the claim, framed it as a discovery response  
 22 and served it on all manufacturers. And that the defense  
 23 says that's not what I had ordered. I had ordered that you,  
 24 in some fashion, tie the request for additional versions  
 25 to identified models. What is your response to that

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1 argument?

2 MR. WOODS: Your Honor, this is Matt Woods.  
3 Mr. Lueck asked that I look into this particular one issue.  
4 We believe, Your Honor, that the discovery that  
5 Honeywell is asking for is narrowly tailored to go to the  
6 heart of the infringement claim, to remove any burden upon  
7 defendants and to essentially avoid any type of prejudice to  
8 Honeywell, should discovery be limited in a way that could  
9 eventually or could be argued down the road as effecting  
10 some type of claim splitting and ultimately res judicata.

11 Honeywell has endeavored, in keeping with  
12 the exchange that Your Honor had with Mr. Lueck back in  
13 September, and the Court's October 7th order, to narrowly  
14 define the discovery to those modules which are  
15 substantially the same as those that were identified in  
16 the prior correspondence that was submitted last year. The  
17 patent, Claim 3 of the '371 patent in particular, has some  
18 very discrete elements and is very straightforward. The  
19 discovery that we are seeking is well known in the industry  
20 to the extent that what we are asking for are modules that  
21 have four basic elements.

22 THE COURT: Yes, I read your papers. So I  
23 understand your position that, hey, we're just asking them  
24 to tell us whether they've got things that meet these  
25 elements. I mean that much is clear to me. I'm trying to

12

1 discussion with the Court on this very issue, Mr. Lueck had  
2 an exchange with Your Honor with regard to the amount and  
3 the type of discovery that we believed was appropriate. And  
4 that exchange can be found on page 31 of the September 9th  
5 transcript.

6 Your Honor specifically asked Mr. Lueck:  
7 Well, when you say the same or similar, what do you mean?  
8 Mr. Lueck explained exactly what he meant by that and,  
9 incidently, or not coincidentally, that is the exact scope  
10 of discovery that we have put in to written discovery. And  
11 Your Honor said: All right. Does everybody understand the  
12 discovery I'm telling them they're entitled to?

13 We took that exchange as it was then embodied in  
14 the Court's order of October 7th and used that as the basis  
15 for the written discovery.

16 One of the outstanding issues that have been  
17 raised historically in the past is that the customer  
18 defendants, those who are now stayed, were not in a position  
19 to comply with the Court's October 7th order because, as I  
20 believe Mr. Horwitz himself pointed out in the September  
21 9th hearing, they didn't know. They didn't know what was  
22 substantially the same, or at least they claimed not to.  
23 And so we were faced with a situation where, based on the  
24 exchange from the September 9th hearing and the Court's  
25 order which recognized, as we view it, Your Honor, that

11

1 get you to respond to the assertion that this does not  
2 square up with the obligation to tie your discovery requests  
3 to specifically identified models. In other words, as the  
4 defense reads my previous statements and orders, they say,  
5 hey, judge, you told these people they're not allowed just  
6 to say to us, in effect, tell us what infringes. They have  
7 to identify a product and then they can ask about it. And  
8 then we had a further discussion where you said, well, what  
9 about later versions or other versions and how would you  
10 identify such versions? And that the crafted attempt to  
11 meet Honeywell's concern was to say if you can ask about  
12 versions that are linked to identified models, that would  
13 be okay. And, judge, they've gone outside that. Now all  
14 they've done is propounded discovery that says tell us,  
15 again tell us what you have that infringes.

16 That's the argument I'm trying to get you to  
17 meet. So it's not helpful to me at this juncture for you to  
18 characterize it as narrowly drawn, et cetera. I need you to  
19 go back into the history of the case and tell me how what  
20 you are asking for is actually based on what went before  
21 today in the case.

22 MR. WOODS: Yes, Your Honor. And I will do so,  
23 because I believe that history is exactly on point with what  
24 brings us here today.

25 Back in September 9th, when we were having the

13

1 the LCD modules that are substantially -- that have  
2 substantially the same structure are in fact relevant  
3 to the analysis.

4 THE COURT: Did you --

5 MR. WOODS: The question then, of course, is  
6 what does it mean to be substantially the same?

7 THE COURT: Yes, that's right. The question is  
8 what does it mean to be substantially the same?

9 MR. WOODS: And, Your Honor, that is exactly the  
10 criteria that were discussed on page 31 of the September 9th  
11 hearing.

12 THE COURT: Right, and it seems to me that  
13 maybe you're reading this without having read the previous  
14 three pages of the transcript, which I have also re-read.

15 But let me have you hold right there for a  
16 second, Mr. Woods. I'll give you another crack at this but  
17 on this specific point about what the parties understood  
18 coming out of that hearing, I understand, I think, what  
19 Honeywell is saying it got from that September conference  
20 and why it's framed its discovery as it has.

21 Let me have somebody -- not everybody. There  
22 needs to be a designee on behalf of the defendants here to  
23 address the defense perspective on this. Who is speaking  
24 for the defense?

25 MR. HORWITZ: Your Honor, it's Rich Horwitz.



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1 I don't have too much to say, Your Honor,  
 2 because I think you framed it exactly. I think that what  
 3 Mr. Woods is doing is basically repackaging what we've  
 4 gone over a few times before to try to require us, the  
 5 defendants, to have the burden of going through all of  
 6 our products. And if you look at that transcript in its  
 7 entirety, you look at the October order and you look at what  
 8 Your Honor told us later, which we've also quoted to the  
 9 Court in my July 20th letter in May of 2006, it's clear from  
 10 our perspective, and I think from the record, that what the  
 11 Court was talking about was the prior and later versions and  
 12 not simply the language that parrots the claim language.  
 13 And what we have asked Honeywell to do is for those products  
 14 that it's already broken down, tell us how they infringe.  
 15 Point us to specific things that meet a specific limitation.  
 16 And to the extent we have been able to determine what an  
 17 earlier or later version is, that would inform us in making  
 18 that decision but it would not require us, which is what  
 19 they're doing now under what they say is removing the  
 20 burden, it's doing exactly the opposite, Your Honor. What  
 21 they want you to do is just give them everything, which  
 22 Your Honor has told them a number of times is not the way  
 23 discovery works.  
 24 THE COURT: All right. Go ahead, Mr. Woods.  
 25 Your crack.

15

1 MR. WOODS: Yes, Your Honor. I would disagree  
 2 with Mr. Horwitz for the following reasons: First of all,  
 3 the prior discussion was done in the context of changing the  
 4 focus from end products to modules. And if we're going to  
 5 look at the history of the case, there is a translation  
 6 function that needs to occur here because, as Your Honor  
 7 well knows, the first round or the first group of defendants  
 8 were in end product manufacturers and so Your Honor's  
 9 comments and the discussions were framed in that context.  
 10 The question becomes, clearly, there was a sense  
 11 that we were entitled to more discovery than just those that  
 12 were expressly identified. And the question then becomes to  
 13 what extent. Mr. Horwitz has said there is some kind of  
 14 mystery about our claim. We have endeavored to show and  
 15 have explained to them --  
 16 THE COURT: Well, hold on. We're going to talk  
 17 about your contention, the adequacy of your contention  
 18 interrogatory responses in a moment. And I'm rejecting,  
 19 I'll just tell you right now, I'm rejecting the notion that  
 20 the defense response to discovery depends upon how you  
 21 respond to their discovery. I'm not going to have any more  
 22 of this you go first stuff. I tried to say that to you  
 23 folks repeatedly. So those things aren't linked in my mind  
 24 and you don't have to argue about them being linked.  
 25 Right now, I'm just giving you your last

16

1 opportunity to explain to me why you think the way you  
 2 framed your demand for additional discovery from these folks  
 3 is correct in light of what we've had to say to each other  
 4 over the course of a few meetings and many, many months.  
 5 MR. WOODS: Your Honor, thank you. And we would  
 6 respectfully submit that if you look at that whole exchange,  
 7 as Mr. Horwitz was suggesting, there was clearly a sense,  
 8 as we believe we're entitled to under the law, to get some  
 9 discovery about modules other than those that have been  
 10 expressly located and expressly torn down and expressly  
 11 identified.  
 12 THE COURT: And now, when you say you are  
 13 entitled to under the law.  
 14 MR. WOODS: Correct.  
 15 THE COURT: Well, you know what?  
 16 MR. WOODS: Your Honor?  
 17 THE COURT: I guess I'm trying to pull from you  
 18 where you think this is linked to my instructions to you  
 19 folks that you had an obligation to tell people, look, this  
 20 is your product. We think it infringes. Here is why. You  
 21 know, we're accusing you of infringing. We've got something  
 22 that we believe infringes. That ought to be the baseline.  
 23 Everybody should have understood that from what I've said to  
 24 people repeatedly.  
 25 MR. WOODS: Correct.

17

1 THE COURT: Now, they are saying you have  
 2 unmoored your discovery from that foundation, and you have  
 3 heard Mr. Horwitz explain why they believe that. I'm trying  
 4 to get you to explain to me how it is you are rooted in that  
 5 foundation, because that is the foundational principle from  
 6 which I am operating.  
 7 MR. WOODS: Yes, Your Honor. The request we  
 8 have made absolutely is rooted in the foundation. We  
 9 identified a series of modules that have been torn down and  
 10 are accused of infringement. As we have told defendants,  
 11 those modules have the following criteria. They are back  
 12 lit. They have an LCD panel and they have two particular  
 13 arrays, at least one of which misaligned, and that is the  
 14 commonality amongst everything that has been identified and  
 15 torn down. And that is how we, Honeywell, understood the  
 16 term "substantially the same" to be implemented in the  
 17 Court's order.  
 18 So we have said to defendants we are asking you  
 19 to identify those modules which are substantially the same  
 20 as those which were expressly identified by model number  
 21 and the way we are defining "substantially the same" is as  
 22 Mr. Lueck and you discussed at the September 9th hearing on  
 23 page 31 where we are trying to provide objective criteria  
 24 for doing that analysis.  
 25 And so we have in fact moored our request for

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<p>SHEET 6</p> <p>18</p> <p>1 discovery not for some fishing expedition, not for 2 everything under the sun but rather take those modules that 3 have been expressly identified and look at these features. 4 And we are asking for everything that has those same 5 features. 6 THE COURT: Okay. I have your position and I 7 can only apologize to the parties because to the extent I've 8 been unclear before, it's not been intentional. I just 9 can't agree with Honeywell here because I'm bound, I think, 10 to agree that what you have done is to say, under the 11 rubric of "substantially the same," is to just recast as a 12 discovery request, tell me everything that infringes my 13 claim. And that is precisely that I have been trying to 14 avoid in this matter, because I view that as a reversal, a 15 basic reversal of the obligation of parties in litigation. 16 You know, maybe I'll turn out to be wrong about 17 this but I don't think you can go to somebody and say I'm 18 suing you and now tell me why I'm suing you, which is what 19 in effect this discovery demands. And I had attempted 20 previously to say, as clearly as I knew how but evidently 21 not clearly enough, you identify what the problem is and 22 they'll have to respond to that. And then Mr. Lueck, as a 23 skillful advocate, would have said, well, there may be 24 versions of this very same device which we can't say by 25 model number because if we're one letter off -- now, I'm</p>	<p>20</p> <p>1 people, Honeywell, if you want to sue people, fine, sue 2 them. But have in mind exactly what it is you're accusing 3 them of doing. And that means if you say they've produced 4 an accused device, you need to have some basis for saying 5 they have an accused device and ask them, okay, tell us 6 about this accused device. You can't say to them, look 7 across your product line and tell us everything that meets 8 our claim language. 9 So have I been clear enough? You could 10 disagree with me, obviously, that this is a correct or an 11 appropriate approach but at least you understand what I'm 12 getting at now, Mr. Lueck and Mr. Woods? 13 MR. WOODS: Your Honor, we certainly understand. 14 And I, with Your Honor's indulgence, just have to ask if I 15 could just say one thing, please, because we do respectfully 16 disagree with the Court about the concern about the 17 potential for res judicata here. We do recognize that there 18 is law out there like the Sharp case that has been cited 19 that talk about the standard for getting additional module 20 model numbers in an industry where models change. 21 We have proposed to the defendants we're 22 willing to buy their modules. We're willing to buy it. 23 Historically, you can't get these things any more and yet 24 they're still within the statute of limitations period. For 25 all these reasons, because respectfully we believe what Your</p>
<p>19</p> <p>1 interpolating, not precisely quoting what he had to say. If 2 we're one letter off or one number off in the alphanumeric 3 sequence in the model number, they could say, well, you 4 didn't ask about that and that's not fair, and I was 5 agreeing well that isn't fair. You know, if you've got a 6 next generation of the very thing you've produced, the fact 7 that you can't name it with precision using the alphanumeric 8 sequence attached to that make or model number shouldn't 9 prevent you from getting discovery on that. 10 That was not intended to open the door for 11 you to say, now, and anything else that meets the claim 12 language, tell us about that, too. I don't view that as 13 proper discovery. I mean that turns the process on its head 14 and I'm just not having it. 15 So to the extent I left people thinking that was 16 the problem or the way I wanted you to proceed, I apologize 17 because it isn't. And I reject the assertion that this 18 raises res judicata problems for you or claim splitting. If 19 you sue them on a specific thing and in the course of 20 discovery, they don't tell you about a different product, 21 nobody I think in their right mind is going to say, well, 22 you gave up a claim against that accused product because 23 you never had the chance to accuse it. So I view that as 24 a red herring. 25 So I'm hoping this is clear enough in telling</p>	<p>21</p> <p>1 Honor is doing is having a tremendously prejudicial effect 2 upon Honeywell's claim, we would respectfully be allowed to 3 brief this issue. We understand where the Court is going. 4 Nevertheless, we feel obligated to create a record here. 5 THE COURT: You've got a record. You have a 6 record which is adequate for review. I don't think any 7 reviewing court is going to look at this and say you didn't 8 make your position clear. I don't need any more paper on 9 this. You don't need to persuade me that you have a 10 position and you think the position is well founded. My job 11 is not to say to you, to every party that has got a position 12 well, okay, go ahead and give me another 40 pages of paper 13 about it. We have been over this now. This is at least the 14 third time I have taken a crack at this. And I've done it 15 in print and I've done it orally and I just don't need more 16 paper on it. 17 It could be I'm wrong. I certainly get 18 reversed; to my chagrin, I do; but I don't think you've got 19 the better of it. I think I understand the argument that 20 you've made and what I'm telling you is you don't have the 21 better of the argument in my view. So let's move forward 22 with the case you've got. 23 MR. WOODS: Yes, Your Honor. One final point of 24 clarification. 25 You had asked if we understood. Is it Your</p>

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SHEET 7

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1 Honor's view that Honeywell is entitled to any discovery  
2 beyond those modules expressly identified? And if so,  
3 could Your Honor clarify for us exactly where that goes?

4 THE COURT: I'm not sure I can clarify it any  
5 more than I have. And I'll have to confess to you that  
6 we're in a region where apparently I haven't been clear  
7 before. I have tried to say, and, you know, the fact is I  
8 don't know that I can say it any better than I just said it,  
9 which is going to be in this transcript and you can take a  
10 look at it.

11 The point is to avoid people having to dodge  
12 behind a particular sequence of numbers associated with an  
13 alphanumeric make or model identification. You wanted to  
14 know initially, my recollection is, you were trying to make  
15 sure that they didn't dodge appropriate discovery by having  
16 a next generation of a model that you had identified but  
17 which you couldn't identify with precision because you  
18 didn't happen to know that particular model number, whatever  
19 it is.

20 That's the kind of thing that I think is fairly  
21 within the ambit of further discovery. You identify some-  
22 thing specific and then you can inquire about generational  
23 changes or additions to something that you've identified.  
24 But you can't take that which I have tried to give you as a  
25 fair ambit beyond a specific piece of hardware that you know

23

1 about and turn it into what you have, which is here is our  
2 claim language. Tell us what you've got that infringes.  
3 That's what you have done in effect. I agree with the  
4 defendants, that's what you have done in effect, and that's  
5 what I'm telling you you can't do. So please take what I  
6 have given you, do your best with it.

7 I'm expecting the defendants to play fair on  
8 this. Mr. Horwitz, do you understand what I'm asking?

9 MR. HORWITZ: Yes, sir.

10 THE COURT: Okay. Well, are you speaking for  
11 the defense on thi point?

12 MR. HORWITZ: I think if anybody wants to chime  
13 in, they can chime in now. But I think what you said is  
14 consistent with what you have told us before.

15 THE COURT: All right. Then move forward with  
16 what I'm telling you now and let's not go back over this yet  
17 again. Let's put it to bed and move forward.

18 All right. Now, we do have an argument about  
19 Honeywell's responses to contention interrogatories and  
20 also argument about conditioning discovery responses on  
21 confidentiality. You've heard what the defense has said  
22 about that.

23 And again, I don't know whether this is yours,  
24 Mr. Woods or Mr. Lueck. Whoever it is, could you please  
25 respond to the assertion that you're just not giving claim

24

1 discovery the way you are obligated to.

2 MR. WOODS: Your Honor, there are several issues  
3 there that have been raised.

4 With regard to claim construction, or contention  
5 discovery, we have provided with the defendants with the  
6 generalized information that we can have right now that  
7 would avoid waiving the privilege at this point. We have  
8 asked for. At the earliest point in time, we served the  
9 defendants with the discovery upon them to get the very  
10 documents upon which we can supplement our contentions.  
11 And it was only later that the defendants served their  
12 contention discovery. And Your Honor has now, we have clear  
13 direction with regard to getting the documents, and we have  
14 tried to tell the defendants provide us the documents and  
15 then we will supplement our contentions.

16 Everyone knows that we have identified modules  
17 and the basis for infringement is those modules have LCD  
18 panels, they have a back light and they have two lens  
19 arrays, at least one of which is misaligned. There is no  
20 mystery here. What we have asked for, and what we have been  
21 asking for since March of this year, has been the documents  
22 from the defendants to which we can point to basically prove  
23 up our case. And we are certainly prepared to do that as  
24 soon as we can provide it, as soon as that documentation is  
25 provided.

25

1 With regard to protective order issues, our  
2 position is and has always been we asked for documents and  
3 all we're asking for is a mutual exchange of documents.  
4 The parties have been working on a protective order.  
5 Candidly, I'm not sure I know what protective order is at  
6 issue because we certainly understand the local rule of the  
7 court and the parties are working on a more formalized  
8 protective order, but we are not withholding any documents  
9 from a protective order standpoint. Rather, we're saying,  
10 defendants, you did not produce documents to us. Can't we  
11 just agree upon a mutual exchange of documents? Because it  
12 seems only fair that since we were the first ones to submit  
13 document requests, that the parties, at a very minimum,  
14 should do a mutual exchange. And that is acceptable to us.

15 THE COURT: All right. Who has got this one for  
16 the defendants?

17 MR. HORWITZ: Your Honor, this is Rich Horwitz  
18 again.

19 I don't understand what contentions Mr. Woods  
20 says they've already given us. We've given you some exam-  
21 ples and basically they said you meet the claim limitations  
22 without anything specific and they have products that they  
23 have broken down and that they have said infringe. And what  
24 the defendants are asking is for them to tell us the basis  
25 of that claim of infringement.



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SHEET 8

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1 It's not privileged. We're not asking them to  
2 give us the memo that they wrote to the client that says we  
3 think these 10 products infringe and here is why and this  
4 is a stronger argument and this is a weaker argument. We  
5 don't need that. We're not entitled to the work product.  
6 What we are entitled to are the factual contentions, the  
7 bases of alleged infringement, and that is what we're not  
8 getting.

9 THE COURT: All right. Now, stop there.

10 Go ahead, Mr. Woods. Respond to that, please.

11 MR. WOODS: Your Honor, we provided. And I  
12 provided it just a few minutes ago and I can provide it  
13 again.

14 THE COURT: Well, wait, wait, wait.

15 MR. WOODS: In our view, the claim is very  
16 straightforward.

17 THE COURT: Well, stop, Mr. Woods, because I  
18 don't think you're answering the point here.

19 MR. WOODS: Okay.

20 THE COURT: I don't think anybody is disagreeing  
21 with you that you said what you view as the essential  
22 elements of the claim. And now what they are telling me is,  
23 look, as to -- pick a defendant. As to Apple -- well, pick  
24 a manufacturer defendant. Select a name. Whoever it is.

25 MR. WOODS: I'll pick Seiko Epson.

28

1 said to them here is a model, here is how it infringes?  
2 These are the limitations of the claim and here is how this  
3 model infringes? That is what they're saying you haven't  
4 done. Are you telling me you have done that?

5 MR. WOODS: No, no, Your Honor. We have told  
6 them this as a general matter. We have also agreed to  
7 provide supplementation on that. What we're asking is, is  
8 give us the assembly drawing so we can point to them. So we  
9 can say -- all right. So, for example, let's take a Seiko  
10 Epson module. There will be assembly drawings that show  
11 exactly where those are, all the elements. And all we're  
12 saying is give us the documents so we have a common means  
13 of discussion so that we can point to the very thing that  
14 is the lens array.

15 THE COURT: All right. Mr. Horwitz, what is  
16 your response to the assertion that they're happy to respond  
17 but you won't give them basic documentation that will allow  
18 a foundation for discussion with precision?

19 MR. HORWITZ: Well, a couple of things, Your  
20 Honor. And then maybe Robert Benson, who represents Seiko  
21 Epson who has been involved directly in this back and forth  
22 of Mr. Woods, may want to chime in.

23 But I think that even without those documents --  
24 and I can tell you. Mr. Woods talked about document  
25 production. I didn't get there yet and I can tell you

27

1 THE COURT: Fine, Seiko Epson. That Seiko Epson  
2 says to you, okay, you've accused my product XYZ of  
3 infringing. What is your basis for saying that that product  
4 infringes? And then it's incumbent upon you as a matter of  
5 contention to say, well, one of the claims is that there be  
6 a back lit aspect. And here, in your product, is a back lit  
7 aspect. It's this piece of hardware. It has two lens.  
8 Yours has two lens. We can identify those there, this and  
9 this. And one of them is misaligned in the product we took  
10 from you. This is how. We say that this one or both are  
11 misaligned.

12 I mean I understand that to be what the defense  
13 is saying. That you've got to take it out of the abstract,  
14 which is claim language, and apply it to devices to say, and  
15 here is why we say your device infringes. That is our  
16 contention about the facts of your thing that meet our claim  
17 limitations. That's what I understand them to be saying  
18 you're declining to do at this point.

19 MR. WOODS: No, Your Honor. On the contrary, we  
20 have done that. We have told them that every single module  
21 that we have accused has those. Now, the question is, how  
22 do we prove that? We have a module. We have a module we  
23 tore it down.

24 THE COURT: Did you identify things? I mean  
25 when you say we've told them all of them infringe, have you

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1 about that. But even without the document, they shouldn't  
2 be able to give up the basis on which they made the claims  
3 from the broken down module. That information isn't  
4 privileged. They should have given that to us when they  
5 responded the first time. They should give it to us now.

6 THE COURT: All right. Well, go ahead and pass  
7 the ball to your colleague then.

8 MR. BENSON: Okay. This is Robert Benson. And  
9 just reiterating what Mr. Horwitz was saying there, we did  
10 serve a couple of interrogatories on Honeywell asking for  
11 the basis of its infringement contentions and the details of  
12 its analysis of those modules it has already torn down.

13 We understand that Honeywell has identified at  
14 least seven or eight distinct model numbers and I believe  
15 they tore down more than 10 different physical modules and,  
16 on that basis of that tear down, have accused the modules  
17 of infringement.

18 We asked them state the basis for that. State  
19 the details of your analysis. They came back and said we  
20 can't do that because it's privileged because it was our  
21 prefiling investigation. And what we are asking for I think  
22 in level of specificity is what Your Honor suggested a  
23 moment ago, which is you broke down this module. Which part  
24 of this module are you contending meets the claim limitation  
25 "light source?" Which component in this module are you

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<p>SHEET 9</p> <p style="text-align: right;">30</p> <p>1 contending is the lens array? We asked them what is the 2 degree of misalignment you measured? They said I can't tell 3 you that either.</p> <p>4 THE COURT: All right. Good enough. Look, 5 here is the short of it. Once again I'm trapped in the 6 "you go first" game that you folks are playing. It's got 7 to stop.</p> <p>8 Honeywell, you are obligated to answer 9 contention interrogatories even early in the case. That's 10 why in the trial management order that I put out; and I 11 believe I put out in this case, because I'm pretty sure I 12 put it out in all of my cases; you've got an obligation. I 13 encourage the parties to file contention interrogatories 14 early and I require answers early; which is not to say that 15 you can't amend your answer as you get greater detailed 16 information, as they come forward with spec drawings that 17 you asked for; that you can't supplement, if you think 18 you need to, contention interrogatory response; or if you 19 think your response is adequate, that you can't then use 20 that other information later in the trial if you think it 21 bolsters the contention interrogatory response you took 22 before. But what you can't do is to hang back and say 23 I'm not telling you until you tell me. That isn't how it 24 works.</p> <p>25 So to the extent the defense is complaining that</p>	<p style="text-align: right;">32</p> <p>1 that it requires a court's intervention to deal with this 2 which seems to me to be a pretty basic discovery point 3 in patent cases but I'm glad to hear it's resolved.</p> <p>4 Okay. Now we had some other letters that were 5 flying around that indicated there may be some additional 6 problems that need to be addressed.</p> <p>7 MR. HORWITZ: Your Honor, this is Rich Horwitz. 8 There was another category of information that 9 we included in the general defendants' letter and that 10 relates to information on Honeywell's product. Could I 11 address that now before we move on to the defendants' 12 specific issues?</p> <p>13 THE COURT: That's fine.</p> <p>14 MR. HORWITZ: Your Honor, we think that they 15 should be required to produce the information that we 16 requested about their own products. It's difficult to 17 just take their word for it when they say that they don't 18 infringe. But even beyond that, in the letter that came 19 from Mr. Grimm yesterday, in response, all they say is that 20 they didn't manufacture anything embodying the claims of the 21 '371 patent and obviously they could have sold or offered to 22 sell something that embodied the claims of the '371 patent. 23 The information on their product is important to us for a 24 number of reasons, including marking. If they manufactured, 25 sold anything in the market, that obviously has implications</p>
<p style="text-align: right;">31</p> <p>1 you won't tell them, look, in response to your request for 2 how Model XYZ infringes, here is our response. It infringes 3 in the following way: Claim 1 says you've got to have a 4 light source. In this XYZ model, the light source is A, 5 technical description, the best you can give it. Whatever 6 you are able to do.</p> <p>7 In short, it's certainly not work product 8 protected that you have a view about why they infringe. 9 Give them your view about how it is the things they make 10 infringe your patent. You're obligated to do it. That is 11 what contention interrogatories are about. So that ought 12 to be clear. I hope it's clear now.</p> <p>13 And on the defense side, I'm not sure why 14 you're not giving them drawings they're asking for; but if 15 they've got an accused device and they have identified it 16 as an infringing device, and they're asking for background 17 information about it, including technical drawings, I'm not 18 sure what possible reason you could have for not giving it 19 to them. Give it to them.</p> <p>20 Does that iron you out the problem? Is there 21 still a problem here with that instruction given, Mr. Woods?</p> <p>22 MR. WOODS: No, Your Honor.</p> <p>23 THE COURT: Mr. Horwitz?</p> <p>24 MR. HORWITZ: No, Your Honor.</p> <p>25 THE COURT: Okay. Well, then I'm nonplussed</p>	<p style="text-align: right;">33</p> <p>1 in this case. Honeywell also has been in this business for 2 a long time. Some of their own material might be prior art 3 for the '371 patent.</p> <p>4 Even if they're right, Your Honor, that none of 5 their products are embodiments, the '371 patent, that in 6 and of itself is relevant to a lack of commercial success 7 argument that we would make. If they didn't use it, how 8 good could it be? And in that context, we would be 9 entitled to information, possibly in a summary fashion, on 10 whatever sales they made of their own products that didn't 11 incorporate the '371 patent.</p> <p>12 So those are the reasons why we think they can't 13 just stonewall us as they have done so far on that issue.</p> <p>14 THE COURT: Who has got this for plaintiffs?</p> <p>15 MR. WOODS: I do, Your Honor. Matt Woods here.</p> <p>16 THE COURT: Okay.</p> <p>17 MR. WOODS: There has been no stonewalling at 18 all. This case is about portable electronics consumer 19 goods. Honeywell has never been, and is not now, a 20 participant in that industry.</p> <p>21 As the defendants all well know through detailed 22 interrogatories answers, the invention of the '371 patent 23 came out of work on a cockpit display for Boeing, the 777 24 Boeing aircrafts, as the defendants also know through 25 detailed interrogatory answers. There, the decision was</p>

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1 made not to incorporate the invention into that display.  
 2 Now, Honeywell has agreed to produce all the  
 3 documents regarding the invention process. They have also  
 4 agreed to produce all the documents even on a broader  
 5 category regarding this cockpit display project so that,  
 6 in fact, the defendants can verify and test Honeywell's  
 7 allegations.  
 8 So really we view this as a nonissue. And  
 9 we're prepared to produce the documents. I think what we're  
 10 hearing from Mr. Horwitz, well, we're entitled to basically  
 11 get everything from Honeywell. Well, you know, we're  
 12 suggesting we're producing all the documents that are  
 13 related to this effort. We're certainly producing all the  
 14 prior art that we're aware of. And we're just saying, look,  
 15 everything else I think falls in the realm of a fishing  
 16 expedition because there is no definition to it.  
 17 THE COURT: Mr. Horwitz, do you want to respond  
 18 to the assertion that to the extent they've got anything  
 19 responsive, they're giving it to you?  
 20 MR. HORWITZ: Well, I guess it depends on what  
 21 they believe is responsive, Your Honor, and what we believe  
 22 is responsive. I'm not sure what else to say. We think  
 23 it's a broader inquiry than they think it is.  
 24 THE COURT: Well --  
 25 MR. ROSENTHAL: Your Honor, this is Lawrence

35

1 Rosenthal for Fuji. Could I make an observation here?  
 2 THE COURT: Yes, you can quickly, but it's got  
 3 to be -- yes, go ahead.  
 4 MR. ROSENTHAL: I think Mr. Woods said it all  
 5 when he said, in one breath, this is about portable devices,  
 6 and in the next breath, but the patent is all about cockpit  
 7 displays.  
 8 I think while their discovery is focused on  
 9 portable devices, we're entitled to take discovery on  
 10 cockpit displays because that was the focus in 1990 when  
 11 the invention was, apparently, it was a practice given to a  
 12 Japanese company. That much we know.  
 13 THE COURT: Well, hold on just a second.  
 14 Mr. Woods, are you suggesting that they can't  
 15 take discovery into the development of the invention,  
 16 itself?  
 17 MR. WOODS: Absolutely not, Your Honor.  
 18 THE COURT: Yes.  
 19 MR. WOODS: Of course, they can.  
 20 THE COURT: Well, I didn't think you were.  
 21 Looks, it sounds to me like this isn't a dispute that is  
 22 much of a dispute. You guys need to get back and talk to  
 23 each other sensibly about this.  
 24 I hear the plaintiff saying they're giving you  
 25 information about the development of the invention, prior

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1 art to the extent they know about it, and if they've got  
 2 information or products associated with the invention,  
 3 you're getting them.  
 4 Have I heard you right, Mr. Woods?  
 5 MR. WOODS: That is correct, Your Honor.  
 6 THE COURT: Well, then, I don't know what it  
 7 is exactly that the defendants are complaining about  
 8 except you think maybe there is something that they're not  
 9 giving you, but your unformed and, at this point at least,  
 10 unsubstantiated concern that you are not getting something  
 11 you are entitled to isn't a basis on which I can wade in,  
 12 but they're telling me you are getting it and I'm not  
 13 hearing a basis for disputing that they're giving you what  
 14 they have that is associated with the development of the  
 15 patent and whatever product they have which itself would  
 16 practice the patented invention. So that disposes of that.  
 17 Maybe at some point you will have something more  
 18 to tell me, and I'm not obviously closing the door on any  
 19 party from further discovery discussions to try to work out  
 20 issues or concerns that anybody has. Nor am I saying you  
 21 can't come back to me if you have a well founded concern  
 22 that I can help you with, but this doesn't fit that  
 23 description.  
 24 Mr. Horwitz, I didn't mean to blow past your  
 25 letter without having covered things you needed to be

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1 covered. Have we done that now, sir?  
 2 MR. HORWITZ: I think we have, Your Honor. Yes.  
 3 THE COURT: Well, then there were other concerns  
 4 that were raised. In particular, the issue about selecting  
 5 the role of lead defendant. So I'm shifting off discovery  
 6 at this point. Let me just say does anybody else have a  
 7 discovery issue that they think needs to be surfaced and has  
 8 been the subject of a letter and is properly raised on this  
 9 call and I haven't addressed it yet?  
 10 (Pause.)  
 11 THE COURT: Okay. I'm hearing nothing.  
 12 MR. HAILS: Your Honor, this is Robert Hails  
 13 for Sony. We did have one letter directed to the license  
 14 defense issue that is unique to us.  
 15 THE COURT: All right.  
 16 MR. HAILS: And, real quickly, this is just an  
 17 issue where we're trying to get information from Honeywell  
 18 to demonstrate that there is an honest dispute over the  
 19 scope of the license. Again, this is defining how many  
 20 products are going to be properly concerned at issue in  
 21 this particular case. We have a license for our client in  
 22 which Honeywell agreed not to sue us on camcorders and that  
 23 term is defined on the license, and then they sued us on  
 24 camcorders.  
 25 THE COURT: Well, let me stop you there because



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1 this is memorialized on a July 20th letter from Mr. Shaw;  
 2 right?  
 3 MR. HAILS: That's right.  
 4 THE COURT: Honeywell, did you get a chance to  
 5 respond to this?  
 6 MR. WOODS: No, we did not, Your Honor.  
 7 THE COURT: Well, this one isn't properly before  
 8 me today. I've got a procedure for this and it requires me  
 9 to give both sides a chance to get their oar on the water  
 10 before we get on the phone.  
 11 MR. HAILS: Okay.  
 12 THE COURT: So with that understanding, is there  
 13 any other discovery dispute where people have had a chance  
 14 to weigh in that I have, not for lack of trying, but I have  
 15 overlooked at this point and not addressed?  
 16 (Pause.)  
 17 THE COURT: Okay. Then let's go ahead and move  
 18 to the lead counsel dispute.  
 19 MR. ROVNER: Your Honor, this is Phil Rovner.  
 20 I'm going to handle this for the manufacturer defendants.  
 21 And I'm bringing to Your Honor's attention my  
 22 letter to the Court of July 14th and Honeywell responded by  
 23 letter on this issue on July 20th. I just want to make sure  
 24 that --  
 25 THE COURT: I have those.

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1 MR. ROVNER: Okay. On behalf of the  
 2 manufacturer defendants, we have really just one goal here.  
 3 We want to make sure that we put our best foot forward  
 4 come trial on the first trial on the issues of validity and  
 5 enforceability. That drives what we had proposed, and  
 6 it's very simple. And it's identified on page two of our  
 7 letter where anything can happen with respect to claim  
 8 construction. The group that we want to try this first  
 9 phase, we want to make sure that they have the best interest  
 10 in leading the group effort on those issues.  
 11 THE COURT: Mr. Rovner, if I have understood  
 12 you right, your basic contention is, hey, this isn't a stay  
 13 against anybody so up through discovery, all of these  
 14 defendants, all these manufacturer defendants, they're in  
 15 the harness and they all are responsible for pulling so any  
 16 one of the group could be in the mix and they should be up  
 17 to speed because they are all in it through discovery.  
 18 Right?  
 19 MR. ROVNER: Yes, that is absolutely our point.  
 20 And Honeywell's proposal might have some merit if the  
 21 discovery was limited to the phase one trial issues, but  
 22 it's not and so there is no reason to name a lead counsel  
 23 that would come from this five defendant trial group.  
 24 I think they're just unnecessarily linking these  
 25 things. We believe the best thing to do -- and basically

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1 it's in response to our initial exchange of letters where  
 2 Honeywell said we don't want claim construction to occur  
 3 in the May time frame. We had sought to move up claim  
 4 construction just so everybody would know the five  
 5 defendants sooner rather than later.  
 6 THE COURT: Well, why don't we just say, if your  
 7 concern is the ground could change, which is the concern  
 8 have you expressed in your letter, and everybody is going to  
 9 be equally up to speed on this, maybe the right thing to do  
 10 is just to hold off on selecting lead counsel until after  
 11 claim construction on the schedule we've currently got.  
 12 MR. ROVNER: Well, that certainly is an option,  
 13 Your Honor. That is certainly something we would, unless  
 14 someone believes differently, we would be in favor of. We  
 15 were just trying to meet Honeywell halfway by moving claim  
 16 construction up, because not only would we be able to name  
 17 the five defendants earlier under our new proposal, but it  
 18 would eliminate one of their issues that they have sought to  
 19 shield discovery from, which is we need claim construction  
 20 rulings, for example, to give you our contentions of  
 21 infringement under the doctrine of equivalents.  
 22 So we thought that that would be a compromise  
 23 proposal but, yes, we would accept just holding back on  
 24 naming of the defendants and trial defendants until claim  
 25 construction under the present schedule.

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1 MR. ROSENTHAL: Your Honor, this is Lawrence  
 2 Rosenthal again.  
 3 If I could address one practical consideration.  
 4 And that is in the current schedule, the likely date of the  
 5 Court rendering a decision on claim construction steps on  
 6 the preparation of the pretrial order period, and that was  
 7 one of our concerns from the get-go when we proposed moving  
 8 it up three months in order to give time for Your Honor to  
 9 rule, and then the products to be selected, and then for  
 10 them to carry the ball on the preparation of the pretrial  
 11 order which is the key first step in a trial.  
 12 THE COURT: Yes. Understood.  
 13 All right. Mr. Woods, is this one yours or is  
 14 this one Mr. Lueck?  
 15 MR. WOODS: No, I get this one, too, Your Honor.  
 16 THE COURT: All right. You are getting heavy  
 17 lifting today.  
 18 MR. WOODS: We're amenable to what the Court  
 19 suggested. I'm just waiting for the identification of the  
 20 lead defendants until after claim construction as set forth  
 21 in the original scheduling order.  
 22 THE COURT: What if that ends up shifting some  
 23 dates? Because I hear what Mr. Rosenthal saying, and I  
 24 presume Mr. Rovner would agree with it and other defendants,  
 25 that you've got to get claim construction in sufficient time

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1 for people to know. Well, not claim construction. You have  
2 to have your lead defendants selected in time for them to  
3 participate meaningfully in the preparation of the pretrial  
4 order.

5 MR. WOODS: Your Honor, the defendants were --  
6 when the defendants were potentially all on the hook back  
7 in March, they had all agreed to the schedule and the dates  
8 as originally implemented. And so it is it has only been  
9 now where there is the potential that some subset might go  
10 first that this is becoming the case. Candidly, I'm a  
11 little concerned about the logistical issues of conducting  
12 discovery, about Honeywell's time to conduct full discovery  
13 in connection with claim construction. And some of those  
14 issues are identified in the letter, including the fact that  
15 we are apparently going to have to go to the Far East for a  
16 lot of these depositions and have to wrangle with embassies  
17 and such because defendants are unwilling to bring their  
18 witnesses over here. So I am concerned about handling any  
19 erosion or compression of the discovery period prior to  
20 claim construction. That could potentially prejudice  
21 Honeywell in a situation where Honeywell is being forced  
22 to go over to the Far East.

23 THE COURT: Here is the short of it. I am not  
24 moving claim construction up. I think Honeywell's concerns  
25 are well founded, although I will say this, Honeywell.

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1 If you think you will have to go through international  
2 conventions or you are going to have to take steps  
3 associated with getting embassy or consulate space to handle  
4 depositions, you should be, I hope you are moving on it  
5 now because what will leave me less than sympathetic is to  
6 hear, well, we tried for three months to negotiate with  
7 the other side for them to bring people and it's then we  
8 started making these arrangements. I think you need to  
9 assume, sad though it may be, that you have people on the  
10 other side who won't make it easy for you and do your  
11 arrangement. And then if you can go ahead and get people  
12 over to the United States and that is helpful to you, great.  
13 But otherwise, you have taken the steps you need to take.  
14 Are you with me?

15 MR. WOODS: Very much, Your Honor. And I can  
16 represent to you that we have been working on that issue.

17 THE COURT: All right. Fine. Well, I'm not  
18 moving claim construction up. I understand the concern that  
19 Mr. Rosenthal has raised but you know what? I think that in  
20 part is a function of you folks being reluctant to go ahead  
21 and pick your five. Now, there are some practical problems  
22 to pick in the five but I agree with Mr. Rovner that  
23 everybody should be moving ahead as if they were going to  
24 trial. All of you should be moving ahead as if you were  
25 going to trial until we have that identified set of five.

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1 And what I'm hearing from the defendants, well, we just  
2 don't think we can pick five right now. Okay? Then you're  
3 all getting ready for trial as if you were going to trial  
4 and that's the way we'll handle it. If we come to the  
5 preparation of the pretrial order and that means that you  
6 are going to have to do some hurry up there, I guess that  
7 means you will have to do some hurry up.

8 MR. HAILS: Okay. Thank you.

9 THE COURT: The schedule is set. It was set  
10 in consultation with everybody. I'm not going to have an  
11 inability to select the five now throw this thing off. It  
12 has been a monumental task, and I don't just mean for the  
13 court. Don't get me wrong. I'm not suggesting I've done  
14 the heavy lifting. You folks have all been engaged in what  
15 is a monumental task, which is trying to get this case to a  
16 point where we can get at least the first piece of it on  
17 for trial. And I'm just not having it come off the tracks.  
18 It's staying on the schedule that it's on. We're moving  
19 ahead.

20 All right. Having said that, I still hope  
21 that people are open to the idea of identifying the lead  
22 defendants earlier rather than later, but I won't make you  
23 do it before claim construction if you really think that  
24 makes it impossible.

25 Okay. Are there any other issues that we need

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1 to address while we're all on the line together?

2 There is a letter here where Seiko was asking  
3 for leave to fully brief something, if I have understood the  
4 letter correctly. Am I right?

5 MR. BENSON: Your Honor, we were raising that  
6 at this juncture because it potentially intersected with  
7 the discovery issues, but I think that has been inherently  
8 resolved insofar as it relates to discovery.

9 THE COURT: All right. Fine. Good. Then we'll  
10 let that go.

11 (Computerized Voice): Joining conference.

12 THE COURT: You're a little late, whoever has  
13 just joined.

14 (Unidentified Speaker): My apologies, Your  
15 Honor. I got dropped.

16 THE COURT: Last, but not least, I got a couple  
17 letters directly from Mr. Benson on behalf of Seiko, and I  
18 would just ask that you make sure you submit things through  
19 local counsel, if you would.

20 MR. BENSON: Thank you, Your Honor. We did  
21 recognize that and tried to correct it.

22 THE COURT: Okay. Now, Mr. Woods, is there  
23 anything else from the plaintiffs' perspective that we need  
24 to take up on this call, sir?

25 MR. WOODS: Nothing, Your Honor.

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1 THE COURT: Okay. Mr. Horwitz or Mr. Rovner,  
2 you folks have done most the speaking for the defense.  
3 Anything?

4 MR. HORWITZ: I don't think so, Your Honor.

5 MR. ROVNER: No, Your Honor.

6 THE COURT: Okay. Does anybody else on the  
7 defense side feel like you need to weigh in?

8 (Pause.)

9 THE COURT: All right. Well, then thanks for  
10 your time today, and I hope we're able to work out other  
11 things going forward and things stay on track. Talk to you  
12 later.

13 (The attorneys respond, "Thank you, Your  
14 Honor.")

15 (Telephone conference ends at 12:05 p.m.)

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# EXHIBIT 21

# CONFIDENTIAL EXHIBIT



# EXHIBIT 22

# CONFIDENTIAL EXHIBIT

# EXHIBIT 23

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HONEYWELL INTERNATIONAL INC.	)	
and HONEYWELL INTELLECTUAL	)	
PROPERTIES INC.,	)	
	)	
Plaintiffs,	)	
	)	C.A. No. 04-1338-KAJ
v.	)	(Consolidated)
	)	
APPLE COMPUTER, INC., et al.,	)	
	)	
Defendants.	)	

**PLAINTIFFS' NOTICE OF RULE 30(b)(6) DEPOSITION  
OF DEFENDANT HITACHI DISPLAYS, LTD.**

PLEASE TAKE NOTICE that, in accordance with Rules 26, 30(b)(6), and 32 of the Federal Rules of Civil Procedure, Plaintiffs will take the deposition of Defendant Hitachi Displays, Ltd. through one or more of its officers, directors, managing agents, or other persons who consent to testify on its behalf and who are most knowledgeable with respect to the deposition subjects set forth in Schedule A at the time and place as set forth below.

Said deposition will be taken on January 10, 2007 at 9:00 a.m. and will be taken at the United States Embassy in Tokyo, Japan or at such other time and place as may be agreed to by the parties. The deposition will continue until completed as provided in the Federal Rules of Civil Procedure. The deposition will be recorded stenographically and by videotape. You are invited to attend and cross-examine.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ Leslie A. Polizoti*

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November 14, 2006

## **SCHEDULE A**

### **I. DEFINITIONS**

1. The term “communication” means any transmission of thoughts, opinions or information, whether written or oral and including without limitation, letters, memoranda, meetings, discussions, conversations, negotiations, agreements, understandings, inquiries, notes, telegrams, and/or e-mail.

2. The terms “Plaintiffs” or “Honeywell” shall mean Honeywell International Inc. and Honeywell Intellectual Properties Inc., including officers, agents, employees, and representatives of each entity.

3. The terms “Hitachi,” “you,” or “your” shall refer to Hitachi Displays, Ltd., Hitachi, Ltd., Hitachi Display Devices, Ltd., and Hitachi Electronic Devices (USA), Inc. and includes, without limitation, your divisions, subsidiaries, directors, agents, representatives, and employees and any predecessor with an interest.

4. The term “Complaint” shall mean the Complaint and any amended Complaints filed by Plaintiffs in this action.

5. The term “Named Defendants” shall mean the defendants named in Honeywell’s Complaints and any Amended Complaints in the Honeywell actions (C.A. Nos. 04-CV-1337, 1338, and 05-CV-874).

6. The term “your corporate organization” shall mean Hitachi, Ltd., Hitachi Displays, Ltd., Hitachi Display Devices, Ltd., and Hitachi Electronic Devices (USA), Inc.

7. The phrase “referring or relating to” as used herein, includes, but is not limited to, the following meanings: bearing upon, concerning, constituting, discussing, describing,

evidencing, identifying, in connection with, pertaining to, respecting, regarding, responding to, or in any way logically or factually relevant to the matter described in the request.

8. The term “Person” shall mean any individual, partnership, incorporated or unincorporated association, and any other legal or commercial entity.

9. The term “Date” shall mean the exact day, month and year, if ascertainable, or, if not, the best available approximation, including relationship to other events.

10. The term “Document” shall mean all writings of any kind, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise as contemplated by Fed. R. Civ. P. 26 in any form, whether on paper, in electronic form, on microfilm, or otherwise. Documents generated by another party or non-party and in your possession, custody or control are within the scope of this request.

11. The term “Identify” when used in reference to a person means to provide the following information:

- a. Full name;
- b. Present or last known address; and
- c. Present or last known telephone number.

12. The terms “‘371 patent” and “patent-in-suit” shall mean United States Patent No. 5,280,371 entitled “Directional Diffuser For A Liquid Crystal Display.”

13. The term “LCD Modules” shall mean liquid crystal display modules.

14. The terms “Accused Module” or “Accused Modules” shall mean those LCD modules identified by Honeywell in its Response No. 1 and Supplemental Response Nos. 1 and 3 to Hitachi Displays, Ltd.’s First Set of Interrogatories (Nos. 1-10) (and any and all generations or variations of those modules and/or substantially similar modules) that were made, used, sold or

offered for sale in, or imported into, the United States by you at any time from October 1998 to the present.

15. The term “lighting components” shall include any and all components of your Accused Modules used to illuminate the LCD panel, and include without limitation backlight units, lamps, LEDs, reflectors, diffusers, polarizers, light pipes/wedges, prismatic/lenticular films and combinations thereof.

## **II. TIME PERIOD**

16. Unless otherwise specifically noted, these deposition topics cover the time period October 1998 to present.

## **III. RULE 30(b)(6) TOPICS**

### **Hitachi’s General Entity Information**

1. Your corporate organization and structure, including the identity of departments, affiliates, groups and individuals with decision-making authority regarding the design, manufacture and distribution of LCD modules.

### **Hitachi’s LCD Modules**

2. All communications between you and any third party regarding Honeywell’s claims of infringement of the ‘371 Patent including, but not limited to any formal and/or informal discussions between you and any third party relating to any request to be defended against Honeywell’s claims of infringement.

3. The circumstances under which you began manufacturing and/or offering for sale LCD modules with two lenticular and/or prismatic films, including but not limited to a description of the technical and marketing reasons for such development.



4. For each of the Accused Modules, from the date of their first manufacture to the present:

- a. the manner in which you identify each such Accused Module, including but not limited to any alphanumeric, model number or other label used to identify each such module;
- b. any and all generations or variations of such Accused Module, including the criteria used to identify generational modules;
- c. the operation and configuration of all lighting components of each accused module, particularly including but not limited to: the presence of lenticular and/or prismatic films and/or structures; the orientation of such structures with regard to the LCD panel and the reasons for such orientation;
- d. the extent to which your customers or intended customers participated in the design of each such Accused Module, including the identification of any design ideas or changes provided by such customers or intended customers;
- e. to the extent you only assemble, but do not manufacture any lighting component used in such module, an identification of where you obtain such component parts including without limitation who manufactures and supplies lenticular and/or prismatic films used in such Accused Module; and
- f. the identification by Bates ranges and the authentication of the technical documents and specifications related to your Accused Modules produced in response to Honeywell's Requests for Production of Documents.

5. Any and all efforts undertaken by or at your direction to investigate whether any LCD Module manufactured, assembled and/or sold by you may infringe the '371 patent, including but not limited to obtaining opinions of counsel and all facts that support your assertion that any Accused Modules manufactured by you do not infringe the '371 patent.

6. The date upon and circumstances under which you first learned of the existence of the '371 patent.

7. Your knowledge of, and experiences with any of the named inventors of the '371 patent and their body of work, including but not limited to your consideration of the subject matter of the presentation entitled "Directional Diffuser Lens Array for Backlit LCDs" given at or about the Japan Display SID Conference in October 1992.

8. Consideration, development and implementation of any alternative design(s) for your Accused Modules relating to different angles of rotation for any lenticular and/or prismatic structures contained thereon; and/or relating to the use of two such structures as opposed to any other number.

#### **Hitachi's Accounting and Financial Reporting Methods**

9. Hitachi's accounting and financial reporting standards, systems, and methods.

10. The method and/or procedure for gathering the data used to calculate and/or compute gross revenue, net revenue, cost of revenue, gross margin, selling, general, administrative and other expenses, income before income taxes and net income on a monthly, quarterly, and annual basis or any other timeframe Hitachi regularly keeps records for its sales.

#### **Hitachi's Distribution, Sale and Marketing of Accused Products**

11. For each Accused Module, from the date of its first sale to the present:

- a. the projected and actual sales revenue generated by month, quarter and year;
- b. the projected and actual sales expenses or cost of sales incurred by month, quarter and year; and
- c. the projected and actual profits and profit margins generated and how profit is calculated.

12. The:

- a. process by which Hitachi distributes and sells its LCD Modules, including without limitation a description of the channel(s) of distribution utilized by Hitachi;
- b. market in the United States and worldwide for Hitachi's LCD Modules; and
- c. process by which Hitachi markets or promotes the sale of its LCD Modules in the United States and worldwide, including any and all advertising or promotional materials and/or campaigns.

13. The target market and/or customer base for Hitachi LCD Modules, and the reason(s) why Hitachi targets this market and/or customer base, including without limitation any and all advertising, marketing and/or promotional efforts Hitachi has undertaken or considered undertaking relating to the Accused Modules.

14. Hitachi's policy and marketing program for maintaining their patent monopolies by not licensing others to use their inventions or by granting licenses under special conditions designed to preserve that monopoly.

15. Hitachi's policies and practices for the negotiation of royalty or license agreements for the use of patented technology, including without limitation, licensing of third party technology for Hitachi's use, the licensing of Hitachi's technology to third parties, and the cross licensing of technologies.

16. Hitachi's license agreements, including the terms and conditions of such license agreements, related to consumer electronics entered into by Hitachi.

17. Royalty or license fees received or paid by Hitachi from October 1998 to the present for any non-consumer license.

18. Any analysis of Hitachi's domestic and foreign market share from October 1998 to the present, including but not limited to, the size of the markets and expected growth in the markets, prices in the markets, supply and demand in the markets, competition and expected future competition in the markets, and factors that might influence the markets.

19. Hitachi's pricing and pricing policies and strategy for the sale of each of the Accused Modules.

20. The effect of selling the Accused Modules in promoting the sale of other products of Hitachi, including but not limited to the existing value of the Accused Modules as a generator of sales of other items, and the extent of such derivative or convoyed sales.

21. Information and documents relied on or reviewed by the corporate representative(s) for purposes of becoming knowledgeable about the topics set forth in Schedule A.

22. Hitachi's document retention policies from October 1998 to the present.

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2006, I electronically filed the foregoing document with the Clerk of Court using CM/ECF, which will send notification of such filing to the following: John R. Alison, Parker H. Bagley, Robert J. Benson, Robert Karl Beste, III, Elizabeth L. Brann, Christopher E. Chalsen, Hua Chen, Arthur G. Connolly, III, Frederick L. Cottrell, III, Francis DiGiovanni, Thomas M. Dunham, Kevin C. Ecker, Amy Elizabeth Evans, York M. Faulkner, Maria Granovsky, Christopher J. Gaspar, Alexander E. Gasser, Alan M. Grimaldi, Thomas C. Grimm, Thomas Lee Halkowski, Angie Hankins, Richard L. Horwitz, Dan C. Hu, John T. Johnson, Robert J. Katzenstein, Nelson M. Kee, Richard D. Kelly, Matthew W. King, Stephen S. Korniczky, Gary William Lipkin, Hamilton Loeb, Robert L. Maier, David J. Margules, David Ellis Moore, Carolyn E. Morris, Arthur I. Neustadt, Elizabeth A. Niemeyer, Andrew M. Ollis, Karen L. Pascale, Adam Wyatt Poff, Leslie A. Polizoti, John F. Presper, Alana A. Prills, Steven J. Rizzi, Lawrence Rosenthal, Avelyn M. Ross, Philip A. Rovner, Diana M. Sangelli, Robert C. Scheinfeld, Carl E. Schlier, Chad Michael Shandler, John W. Shaw, Matthew W. Siegal, Neil P. Sirota, Monte Terrell Squire, William J. Wade, Roderick B. Williams, Edward R. Yoches.

I further certify that on November 14, 2006, I caused to be served true and correct copies of the foregoing on the following in the manner indicated:

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